

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Multi-Association Group (MAG) Plan for)	CC Docket No. 00-256
Regulation of Interstate Services of Non-Price)	
Cap Incumbent Local Exchange Carriers)	
and Interexchange Carriers)	
)	
Federal State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
Access Charge Reform for Incumbent Local)	CC Docket No. 98-77
Exchange Carriers Subject to Rate-of-Return)	
Regulation)	
)	
Prescribing the Authorized Rate of Return for)	CC Docket No. 98-166
Interstate Services of Local Exchange Carriers)	

**NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
PETITION FOR RECONSIDERATION**

NATIONAL TELEPHONE
COOPERATIVE ASSOCIATION

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December 31, 2001

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EXECUTIVE SUMMARY

NTCA respectfully requests that the Commission review and revise its rules to require all competitive telecommunications carriers (CETCs) seeking Interstate Common Line Support (ICLS) to demonstrate their eligibility to receive ICLS and show that supports meets the use and sufficiency requirements in Section 254(e). The FCC's new rules for disbursing ICLS to CETCs based on the incumbent's costs will not ensure compliance with the Telecommunications Act of 1996. The Commission has no means of determining how unregulated CETCs are using their support and whether the support distributed to them complies with sufficiency requirements in Section 254(e). The FCC should therefore suspend implementation of the ICLS portability rule until it has reviewed and revised its rules and definition of competitive neutrality.

NTCA also requests that the Commission phase in the multi-line business subscriber line charge (SLC) increase over the next three years. The impact of the January 1, 2002, flash-cut \$3.20 monthly per-line increase on small rural businesses struggling with the economic recession will be particularly harmful. Phasing in the increase over a three-year period will lessen the blow and help these businesses recover from the recession.

And lastly, NTCA recommends that the Commission allow rural carriers to forego any SLC increase on Centrex lines to public institutions providing essential education, health, and public safety services in rural communities and recover their revenue requirement due to the different SLC rate in ICLS. These institutions provide significant public benefits to rural America and the impending increase is contrary to Section 254 and will inflict a heavy and unnecessary burden on them. In any event if the Commission decides that it will not permit different treatment for these customers, it should permit carriers to phase-in the SLC increase over a three-year period as recommended above.

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**NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
PETITION FOR RECONSIDERATION**

The National Telephone Cooperative Association (NTCA)¹ petitions the Federal Communications Commission (Commission or FCC) to reconsider² its order in the above-captioned proceeding and amend its rules that make ICLS available to all CETCs³ and flash-cuts the multi-line business SLC from \$6.00 to \$9.20, on January 1, 2002.⁴ NTCA specifically requests that the Commission: (1) reconsider its rule providing that all CETCs may obtain ICLS on the basis of the incumbent's costs and review its definition

¹ NTCA is a non-profit corporation established in 1954 and represents 545 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as "rural telephone companies" in the Telecommunications Act of 1996 (Act). They are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² Pursuant to 47 C.F.R. § 1.429.

³ 47 C.F.R. § 54.307, 47 C.F.R. § 54.315 and 47 C.F.R. § 54.901.

of competitive neutrality before making ICLS available to CETCs; (2) phase-in the multi-line business SLC increase over next three years (\$1.00 increase per year for the first and second year, and a \$1.20 increase in the third year); and (3) enact rules that permit carriers to forego any SLC increase on Centrex lines to institutions providing essential government, education, health and safety services in rural incumbent local exchange carrier (ILEC) service territories.

In its order the Commission rejected the MAG proposal to limit the new universal service support mechanism for the interstate loop costs of RoR ILECs to RoR carriers that participate in the NECA pools. Instead, it decided that ICLS would be available on a per-line basis to CETCs, regardless of whether the CETC is a RoR carrier and/or a NECA pool participant. Under the new rules, ICLS will be distributed to unregulated CETCs in an amount equal to the RoR ILEC's average per-line projected interstate common line revenue requirement that exceeds the SLC caps for each ILEC customer class. And, CETCs can receive this support by simply filing a letter with the FCC and Universal Service Administration Company (USAC) asserting that they will use the support received for the provision, maintenance, and upgrading of facilities and services for which support is intended.⁵

The FCC's new procedures unfortunately will not ensure compliance with Section 254(e). The Commission has no means of determining how unregulated CETCs, unlike

⁴ 47 C.F.R. § 69.104(o).

⁵ *In the Matter of the Multi-Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers* CC Docket 00-256, *Federal-State Joint Board on Universal service* CC Docket 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate of Return Regulation* CC Docket No. 98-77, and *Prescribing the Authorized Rate of Return for Interstate Services for Local Exchange Carriers* CC 98-166, FCC 01-304, ¶¶ 138, 153, and 176 (rel. November 8, 2001).

RoR carriers or other tariff filing entities, use their universal service support. Without a verification mechanism that compares the unregulated CETC's costs of providing service to the amount of ICLS received, the FCC cannot determine whether the ICLS disbursements to CETCs are being used for the purpose intended or whether they comply with sufficiency provisions contained in Section 254(e). NTCA therefore respectfully requests that the Commission review and revise its rules to require all CETCs seeking ICLS to demonstrate their eligibility to receive ICLS and show that supports meets the use and sufficiency requirements.⁶

NTCA also requests that the Commission phase in the multi-line business SLC increase over next three years. The impact of the January 1, 2002, \$3.20 monthly per-line increase on small rural businesses struggling with the economic recession will be particularly harmful. Phasing in the increase over a three-year period will lessen the financial blow to these businesses that are typically smaller and much more severely affected by the economic downturn than their urban counterparts. And lastly, NTCA recommends that the Commission allow carriers to forego any SLC increase on Centrex lines to institutions providing essential education, health, and public safety services in rural communities. These public service institutions provide significant public benefits to rural America and the impending monthly increase is contrary to Section 254.

⁶ The services for which support is intended includes: (1) voice grade access to the public switched network, (2) local usage (unlimited usage portion of basic local exchange service), (3) dual tone multi-frequency signaling or its functional equivalent (short call set up times); (4) single party service (exclusive use of the loop for a call); (5) access to emergency services, (6) access to operator services, (7) access to interexchange service (defined as "the use of the local loop, as well as the portion of the switch, that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier necessary to access an interexchange carrier's network."), (8) access to directory assistance, and (9) toll limitation for qualifying low-income customers (toll call blocking and capping usage on a monthly basis).

I. THE RULES THAT MAKE ICLS AVAILABLE TO ALL ETCS VIOLATES SECTION 254(e) OF THE ACT

A. It will be impossible for some CETCs to show that they are using ICLS to provide facilities or services for which ICLS is intended.

The Commission has established ICLS in furtherance of its goal of making implicit support explicit. The “explicit” mechanism, which the FCC has chosen, is the result of a rate structure change that recognizes that regulated rate of return companies common line revenue requirements cannot be met under the new rate structure. Thus, the Commission has correctly concluded that ICLS is intended to provide “RoR carriers” with the support needed to meet their residual common line revenue requirements. That residual is what remains of a RoR carrier’s revenue requirement after recovery of its common line revenue from SLCs, other common line end user charges, Long Term Support (LTS), and the transitional carrier common line (CCL) charge to the extent that it remains.⁷

ROR carriers’ common line revenue requirements are derived from the actual costs of providing loops. These costs are recognized in the interstate jurisdiction through the separations process and accounted for in the carrier common line revenue requirement. In the present environment, existing accounting rules and the maintenance of access tariffs ensure that RoR carriers’ access charges contain common line rate elements that recover these common line costs. Once ICLS is fully implemented, the Commission will still have the tools necessary to determine that this residual recovery mechanism is still

47 U.S.C. §254(c)(1), 47 C.F.R. § 54.101, *Universal Service First Report and Order*, 12 FCC Rcd at 8807-25, ¶¶ 56-87. (clarification added).

⁷ *In the Matter of the Multi-Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers* CC Docket 00-256, *Federal-State Joint Board on Universal service* CC Docket 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate of Return Regulation* CC Docket No. 98-77, and *Prescribing the Authorized Rate*

attributable to common line costs attributable to facilities and services used by RoR carriers in the provision of access.

The existing accounting and separations rules as well as tariff filing rules will remain in place for RoR carriers under the new ICLS mechanism. Section 254(e) therefore can be enforced with respect to these carriers because the Commission can verify that ICLS in fact is the correct explicit dollar amount that replaces an RoR carrier's revenue requirement formerly embedded and recovered in a per-minute rate. With respect to unregulated CETCs, however, the very fact that ICLS is based on RoR carriers' loop costs and that the mechanism is created to replace an existing RoR carrier rate element makes it impossible for the Commission to determine that CETCs with no loop costs can or are using this support as required by Section 254 (e), *i.e.*, "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."

Furthermore, Section 254(e) requires that support should be "sufficient" to achieve the purposes of universal service. RoR carrier interstate access charges are based on each RoR carrier's cost of providing interexchange carriers (IXCs) access to their network for the provision of long distance service.⁸ ICLS is part of the revenue requirement attributable to a ROR carrier's cost. It is the regulated RoR carrier's cost information that will provide the FCC and USAC with the indispensable means to verify and ensure that ICLS will be used for the purpose intended and that the "sufficiency" requirement will be satisfied with respect to the RoR carrier. The same cannot be said of CETCs that have no common line costs. CETC certification letters will not give the Commission specific

of Return for Interstate Services for Local Exchange Carriers CC 98-166, FCC 01-304, ¶142 (rel. November 8, 2001)(*MAG Order*).

information about the CETC's common line cost or for that matter, any specific costs. The Commission will not be able to determine that ICLS based on RoR carriers cost is being used "for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁹ In other words, the Commission will not be able to determine if the amount of support distributed to a CETC is in violation of the Act. The Commission will only be able to guess whether an unregulated CETC is using ICLS for the services "intended" and whether the support is "sufficient."

B. ICLS portability rules should not be implemented until the Commission reexamines the effect of its definition of competitive neutrality on universal service.

The current rules for portability allow every unregulated CETC the ability to receive per-line support based on the incumbent's costs. The rules ignore the CETC's costs as well as the fact that the underlying customer may already receive supported services from one or more providers in addition to the services received from a newly designated CETC. The application of the portability rules to ICLS will aggravate distortions that have begun to appear as a result of the portability rules. The Commission should therefore review its definition of competitive neutrality and suspend application of the portability rules to ICLS in the interim. A suspension of 47 C.F.R. 54.307(a)(1) will allow the Commission time to assess the overall effect of its portability rules on universal service before implementing new portability rules that make a mockery of Section 254(e).

⁸ *Id.*, ¶ 16.

⁹ Section 254(e).

The Commission should also examine the effect of providing ICLS to multiple carriers and multiple services. Existing rules allow multiple carriers serving the same customer to each receive the per line support that is determined on the basis of the ILEC's costs. The Act does not promise that every eligible customer will receive more than one supported package of basic telecommunications service or that "every local telephone provider" will receive support.¹⁰ The Act only promises sufficient and competitively neutral universal service funding to enable all "*customers*" access to basic telecommunications service at a reasonable price.¹¹ And ensures that rural customers in high-cost areas have access to comparables services at rates that are comparable to those in urban areas.

Congress never envisioned the scenario that is developing as a result of the Commission's interjection of an additional principle of universal service that includes a definition of competitive neutrality, which provides per-line support to every CETC that files loop counts with USAC based on the incumbent's cost.¹² The adoption of a new rule requiring that ICLS be available to all CETCs demonstrates the fallacy of this definition of competitive neutrality. The rule providing for portability of ICLS does not promote competitive neutrality or serve the public interest. The rule allows CETCs to obtain support based on ILEC costs that are related to the provision of loops regardless of whether CETCs provide loops or incur common line costs. Under this regime, CETCs

¹⁰ *Allenco Communications, Inc. v. Federal Communications Commission*, 201 F.3d 608, 619 (5th Cir. 2000).

¹¹ 47 U.S.C. § 151. *Allenco Communications, Inc. v. Federal Communications Commission*, 201 F.3d 608, 619 (5th Cir. 2000).

¹² *Universal Service First Report and Order*, 12 FCC Rcd 8932-34, ¶¶ 286-290. *MAG Order* at ¶ 151.

with no common line costs and no obligation to pass the benefits on to consumers reap an absolute windfall that provides a competitive advantage.

The new rules undermine the Commission's ability to enforce sections 254(e) and (k).¹³ To effectively enforce sections 254(e) and (k), the Commission should base sufficient support on the carrier's own costs to provide the supported services. This safeguard is essential because CETCs can easily game the system:

by 'entering' a service territory as an eligible telecommunications carrier (ETC) using a combination of its own low cost facilities, where beneficial to the CETC, and resale of the ILEC's retail services where facilities-based service is not cost effective. Thus, ... a wireless carrier ... could obtain ETC status without incurring the costs, or providing the quality of service comparable to the ILEC's, and yet obtain per-line support at the ILEC's level. The ILEC's per line support would represent costs far in excess of those associated with the CETC's costs or service. The CETC effectively could receive a windfall...¹⁴

In fact, CETCs have already begun receiving the windfalls. During the past three years, wireless carriers have received several ETC designations throughout the country. In most cases wireless CETCs have taken few, if any, customers away from rural ILECs, but have instead provided ILEC customers with a subsidized wireless service in addition to their existing wireline service. Consequently, these customers receive two separate forms of the same supported basic telephone service – a wireless and wireline version. US Cellular in the state of Washington provides a prime example of the universal service support problem within the FCC's current rules. Shortly after its ETC designation in

¹³ Section 254(k) provides: "A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services."

¹⁴ Comments of the Montana Telecommunications Association, CC Docket 96-45, filed November 3, 2000, pp. 3-4.

December 1997, US Cellular began receiving universal support payments without apparently acquiring a single new customer. According to USAC's fourth quarter filing for 2001, US Cellular serves 44,192 customers and receives \$762, 044 monthly and more than \$9 million annually in high-cost universal service support.¹⁵ This results in U.S. Cellular receiving \$17.24 in universal service payments per-customer every month. U.S. Cellular simply took the money because the current rules permit it. It never once demonstrated its actual need for universal service support based on its costs. The amount of support it received was based on the ILEC's costs, not its own, which are in all likelihood much less than the ILEC.¹⁶

The Act provides that all Americans have access to adequate telecommunications services at reasonable and affordable charges.¹⁷ It does not provide that every American should receive multiple forms of the same supported service from multiple unregulated CETCs receiving the same amount of universal service support at the same time. Ensuring that each provider that receives ICLS uses it for the purposes intended is a duty that the Commission may not abdicate to unregulated CETCs.¹⁸ The Act also expressly contemplates Federal and State mechanisms to monitor and verify that carriers receiving support are eligible to receive support and use the support properly.¹⁹ The Commission cannot simply assume or pretend that CETCs with no common line costs will use ICLS

¹⁵ USAC Quarterly Administrative FCC Filing, 2001, 4Q, HCO1.

¹⁶ Because universal support is based on the costs and investments of the ILEC and averaged over the ILEC's total lines, these costs remain fixed, even if the ILEC loses customers to CETCs. These losses can result in an increase in per-line support for both the ILEC and the CETC. Hence, the overall size of the fund can grow exponentially under the Commission's current rules.

¹⁷ 47 U.S.C. § 151.

¹⁸ *Texas Office of Public Utility Counsel v. Federal Communications Commission*, 265 F3d 313, § III(B), (5th Cir. 2001). (An "agency abdicates its role as a rational decision-maker if it does not exercise its own judgment, and instead ceded near-total deference to private parties...").

for the provision, maintenance, and upgrading of facilities and services for which the support is intended. It cannot ensure that unregulated CETCs are in compliance with Section 254(e) or 254(k).

The public interest favors a suspension of the rule making ICLS portable. The lack of appropriate verification procedures to safeguard against improper distributions of ICLS will lead to unpredictable expansion of funding needs to maintain support for multiple carriers and services. It will also result in regulatory arbitrage and provide unfair competitive advantage to some CETCs. The preservation of universal service is critical. The Commission should therefore review the current scheme and amend its definition of competitive neutrality before proceeding with the implementation of rule 47 C.F.R. 54.307(a)(1).

The Commission is required to establish rules based on the principle that there be “specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”²⁰ Section 254(e) also requires carriers receiving support to “use the support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” The Commission’s current rules for the disbursement of Interstate Common Line Support do not allow it to ascertain that all CETCs are in compliance with Section 254(e). The rules automatically permit CETCs to obtain ICLS regardless of the nature of their costs. The Commission can avert harm to the public by suspending the implementation of 47 C.F.R. 54.307(a)(1) until it reviews its definition of competitive neutrality and the application of that definition to ICLS.

¹⁹ *Qwest Corporation v. Federal Communications Commission*, 258 F.3d 1191, § II(a)(1), (10th Cir. 2001).

II. THE FCC SHOULD PHASE-IN THE MULTI-LINE BUSINESS SLC INCREASE OVER A THREE-YEAR PERIOD

The impact of the January 1, 2002, flash-cut \$3.20 monthly per-line increase on small rural businesses struggling with the economic recession will be particularly harmful at this time. Phasing in the increase over a three-year period (\$1.00 increase per year for the first and second year, and a \$1.20 increase in the third year) will significantly lessen the blow to these businesses, which are typically smaller and much more adversely affected by the economic downturn than their large city counterparts. The Commission has previously recognized that rural LECs face diverse circumstances and that a “one size does not fit all” in considering universal service and access reform mechanisms for rural carriers.²¹ In the past the FCC has wisely allowed rural carriers to gradually phase-in rate changes as a result of the universal service reforms.²² The Commission should do the same in this proceeding and provide rural carriers with three-year gradual phase-in of the multi-line business SLC increase.

There is good cause for allowing the three-year phase-in. First, the robust economic expansion that existed when the Commission initially considered the multi-line business SLC increase has dramatically changed for the worse. The level of revenues that many small rural businesses received a year ago is no longer available to cushion an abrupt \$3.20 monthly increase, which represents a 51% increase in the current charge.

²⁰ § 254(b)(5), also see, *Qwest Corporation v. Federal Communications Commission*, 258 F.3d 1191 (10th Cir. 2001).

²¹ *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Multi-Association Group (MAG) Plan for the Regulation of Interstate Services of Non-Price Cap Incumbent*

Implementing the increase over a three-year period will help small businesses in rural America better endure the recession.

Second, the phase-in will continue to allow the FCC to attain its goal of making implicit subsidies explicit. The amount of support not included in the multi-line business SLC on January 1, 2002, will remain in the CCL until it is included in the ICLS and gradually phased into the multi-line business SLC over time – similar to the 18-month phase-in of CCL recovery in the ICLS. NTCA requests that NECA should be permitted sufficient time to file new tariffs reflecting this phase-in. Support will become explicit quickly during the three-year phase-in period because it will be included in the ILCS as early as June 2002. As a result, the phase-in will assist the Commission's efforts to meet its universal service and access reform objectives and will allow rural businesses to recover faster from the recession when economic conditions become more stable.

And third, Regulatory Flexibility Act (RFA) allows the Commission to consider alternative compliance timetables that take into consideration the resources of small businesses and the economic conditions affecting them.²³ The RFA also permits the FCC to adopt an alternative rule or rate to obtain its objective in a less burdensome way on small entities.²⁴ It is time for the Commission to use its authority to provide small rural businesses with a timetable that avoids the resulting rate shock of the \$3.20 flash-cut increase. NTCA therefore urges the Commission establish a phase-in the multi-line business SLC over next three years to allow RoR LECs and small rural businesses better

Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, FCC 01-157, ¶ 4 (rel. May 23, 2001).

²² *Id.*

²³ *Id.*, ¶ 233.

withstand the current economic decline and help facilitate new economic growth in rural America.

III. THE COMMISSION SHOULD ALLOW CARRIERS TO FOREGO ANY SLC INCREASE ON CENTREX LINES TO PUBLIC SERVICE INSTITUTIONS

The Commission should also adopt rules that allow carriers to forego any SLC increase on Centrex lines to institutions providing essential education, health, and public safety services in rural communities. These public service institutions provide essential public benefits to rural America and the impending monthly increase to \$9.20 per-line will inflict a heavy and unnecessary burden on them. For an existing rural North Dakota Hospital with approximately 2000 Centrex lines, the immediate \$3.20 increase translates into a \$6,400 monthly and \$76,800 annual increase in the hospital's telephone bill. This type of rate shock is contrary public service goals set forth in section 254 to the Act.

Section 254 provides that hospitals, schools and libraries shall be provided discounts on their telecommunications services in order to protect the public interest, convenience and necessity.²⁵ Section 254 also allows the Commission to designate additional services for support mechanism for schools, libraries and health care providers.²⁶ These provisions provide that the Commission should implement rules that will allow these institutions to obtain discounts on telecommunications services to assist them in promoting and enhancing the benefits they provide to their communities. Imposing an unnecessary SLC increase on these institutions will only hinder, rather than enhance, Commissions efforts to achieve the objectives of section 254.

²⁴ *Id.*, ¶¶ 258 and 259.

²⁵ Section 254(h) and Section 254(b)(7).

It is in the public interest to freeze the current \$6.00 SLC for every Centrex line and allow the residual \$3.20 per line to be recovered from the ICLS. Freezing the SLC on Centrex lines for the “public institutional telecommunications user” will not only lessen the financial blow but also prevent the otherwise resulting increase in health and education costs to Americans living in these rural communities.²⁷ Minimizing the burden on rural public service institutions and the communities they serve clearly protects and promotes the public interest goals envisioned in the Act. In any event if the Commission decides that it will not permit different treatment for these customers, it should permit carriers to phase-in the SLC increase over a three-year period as recommended in Section II above.

²⁶ Section 254(c)(3).

²⁷ Section 254(h)(c) provides that the term “public institutional telecommunications user” means an elementary or secondary school, a library, or a health care provider.

IV. CONCLUSION

In order promote competitive neutrality in rural America and provide consumers with access to affordable telecommunications services in accordance with section 254, the Commission should: (1) reconsider its rules providing that all CETCs may obtain ICLS on the basis of the incumbent's costs; (2) suspend implementation of the ICLS portability rule until it has had an opportunity to review the definition of competitive neutrality; (3) phase in the multi-line business SLC increase over the next three years; and (4) adopt a rule allowing carriers to forego any SLC increase on Centrex lines to institutions providing essential education, health, and public safety services in rural ILEC communities and to recover their revenue requirements due to the different SLC rate in ICLS.

Respectfully submitted,

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December 31, 2001

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Petition for Reconsideration of the National Telephone Cooperative Association in CC Docket 00-256, FCC 01-304 was served on this 31st day of December 2001 by first-class, U.S. Mail, postage prepaid, to the following persons

/s/ Rita H. Bolden

Rita H. Bolden

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